

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

QUINCY DAVIS, #274344,

Petitioner,

v.

ACTION NO. 2:05CV194

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

On April 8, 2004, while in the custody of the Virginia Department of Corrections, petitioner was charged with a disciplinary offense, "Possession of Tools or Implements With Which to Disable, Alter, Tamper or Interfere With Such Equipment or Devices." On April 16, 2004, after a two-day disciplinary hearing, petitioner was found guilty of the charge and was penalized by a "[l]oss of 60 days good-time." The instant petition alleges that the prison disciplinary hearing violated the Due Process and Equal Protection Clauses of the United States Constitution.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report

of the Magistrate Judge was filed on August 16, 2005, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the United States Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed August 16, 2005, and it is therefore ORDERED that the petition be DENIED and DISMISSED as petitioner's claims are moot since he was released from the Virginia Department of Corrections on July 28, 2005. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/
JEROME B. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

September 16, 2005